

STATE OF SOUTH CAROLINA	)	IN THE DISTRICT COURT
	)	FOR THE DISTRICT OF SOUTH CAROLINA
COUNTY OF CHARLESTON	)	CA No. 2:16-cv-03686-RMG
	)	
Justin R. Silverman,	)	
	)	
Plaintiff,	)	
	)	<b>AFFIDAVIT OF</b>
	)	<b>JUSTIN R. SILVERMAN</b>
vs.	)	
	)	
National Board of Medical Examiners	)	
	)	
	)	
	)	
Defendant.	)	
_____	)	

PERSONALLY appeared before me, Justin R. Silverman who, first being duly sworn, says:

1. I am Justin Silverman and give this affidavit of my own free will and accord. I have reviewed the Complaint filed on my behalf in the matter, *Justin Silverman v. National Board of Medical Examiners*, U.S. District Court for the District of South Carolina, Charleston Division.
2. Exhibit One to the Complaint consists of the materials which I submitted to the National Board of Medical Examiners ("NBME") in my effort to obtain reasonable accommodation for my disabilities. These are true and accurate copies of the documents. They include the following:

Personal Statement

Neuropsychological Evaluation

Testing Report

MCAT Exam Score Report

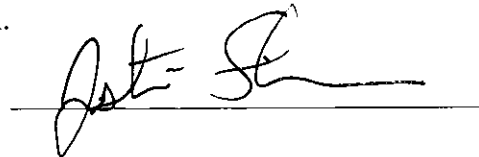
USMLE Request for Test Accommodation

3. My representations to the NBME are truthful to the best of my knowledge, information, and belief.
4. My circumstances with my continued education at the Medical University of South Carolina involve the MUSC Progress Committee. A copy of the relevant MUSC policy is attached hereto as Exhibit One.
5. At my request, my counsel wrote MUSC on August 30, 2016. A copy of his letter is attached hereto as Exhibit Two.
6. In response, the MUSC Progress Committee provided the letter which is attached hereto as Exhibit Three.
7. As the letter notes, the Progress Committee has given me until December 31, 2016 to take Step 1 of the USMLE, and I cannot have any further delays to my academic record:

Please be reminded that there is a time limit of 6 years for MUSC medical students to complete their undergraduate education. As of June 30, 2016, you have used 4 of the allowed 6 years. Therefore, you cannot have any further delays to your academic or professional record.

September 1, 2016, letter of MUSC Student Progress Committee to Justin Silverman.

8. I am informed and believe that should I be dismissed from MUSC medical school, it is highly unlikely that I would be able to gain admission to any other medical school in the United States, and this would likely end all chances of my becoming a physician.



A handwritten signature in black ink, appearing to read 'Justin Silverman', is written over a horizontal line.

Justin R. Silverman

SWORN to before me this 21<sup>st</sup>

day of September, 2016

Whitney D. Fields  
Notary Public for South Carolina

My Commission Expires: March 18, 2023



Whitney D. Fields  
NOTARY PUBLIC  
State of South Carolina  
My Commission Expires  
March 18, 2023

# **Exhibit 1**

## Student Progress

### College of Medicine | Student Progress Guidelines

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The Student Progress Committee conducts standing meetings four times a year, (January, April, August, and December) as well as on an as needed basis. During these meetings, the Progress Committee reviews the academic and professional progress of all students with regard to established progression standards. Students in good academic standing are approved in aggregate for continuation of their studies at each meeting. Students who do not meet required academic or professional standards or whose progress may be lagging as evidenced by academic and/or professional concerns are considered individually by the Progress Committee. When appropriate, additional Progress Committee meetings are called to consider students who are not demonstrating appropriate academic or professional progress. In all cases involving the possibility of an adverse action being recommended, the student will be invited to meet with the Progress committee, and no action will be recommended or taken until the student appears before the Progress Committee to discuss their particular circumstances. In addition, the student is afforded specific appeal rights in all cases involving a recommended adverse action. The appeal process will be conducted by a separate committee, namely the Student Progress Appeals Committee.

A student might refuse to appear before the Progress Committee despite reasonable efforts to accommodate the student (e.g., multiple invitations, adequate notice). If a student does not report to the committee, a certified letter will be sent to the student to ensure that notification was received. If student does not appear after certified notification, the Progress Committee may proceed with the recommendation of adverse actions. Student appeal rights also apply to this circumstance.

#### Reasons for Referral to Progress Committee

The Progress Committee may require students to appear before the committee for any of the circumstances listed.

#### Preclinical Years

Academic Performance of less than 70% in any theme at the end of each block and/or at the end of each semester  
 Failure to remediate a theme at the end of a semester  
 Failure to complete the CPX 2 and Board Preparation Course at the end of year 2  
 Failure to take Step 1 by August after the second academic year  
 Failure to successfully complete Step 1 after two (2) attempts or failure to complete second attempt within 6 months of first attempt

#### Clinical Years

Failure to successfully complete Step 2 CK after two (2) attempts or failure to complete second attempt within 6 months of the first attempt  
 Failure of any clinical course or rotations  
 Failure of any clerkship OSCE or written exam  
 Failure of CPX3 exam and/or failure to remediate CPX 3 exam

#### All Academic Years

Failure to maintain satisfactory academic progress in meeting the degree completion requirements  
 Failure to take the USMLE Step exams by the specified time  
 Failure to meet professional expectations or requirements  
 All granted leave of absences or academic withdrawals  
 Failure to adhere to academic or professionalism advice by Student Affairs if the student is having either academic or professionalism difficulty

#### Student Advocacy and Advisement

It is the role of the Office of Student Affairs to provide academic advisement to students from initial matriculation through successful graduation from medical school. Student Affairs monitors the academic and professional progress of all students. The Associate and Assistant Deans for Student Affairs meet regularly with the Associate Deans for Curriculum (Basic and Clinical Sciences) to proactively determine whether students are making



adequate academic progress. All matters related to professionalism are reported to the Associate and/or Assistant Dean for Student Affairs. With regard to the Student Progress Committee, the Associate and/or Assistant Dean meet with students prior to any appearance before the Student Progress Committee, Student Progress Appeals Committee, or Professionalism Subcommittee. At such meetings, the Associate or Assistant Dean for Student Affairs explain the process to the student and assist the student in preparing for the meeting (the written statement and verbal presentation). One or both Student Affairs Deans attend all Progress Committee meetings in an Ex officio capacity to provide support and advocacy on behalf of the student. The student is also permitted to bring additional support person(s) or advocate(s) (not legal counsel) to any appearance before the Progress Committee.

### **Student Appeal Process**

In cases where the Progress Committee recommends an adverse action (e.g., repeating school year, academic or professionalism probation, leave of absence, school withdrawal, dismissal), the student has the right to appeal this decision. Student appeals are heard by the separate Student Progress Appeals Committee. This committee consists of 5 members appointed for 3 year terms by the Senior Associate Dean for Medical Education (3 members constitutes a quorum). To avoid a potential conflict of interest, none of the members from the Student Progress Committee may serve on the Student Progress Appeals Committee. The Ex Officio members of the Student Progress committee include the Senior Associate Dean for Medical Education, the Associate and Assistant Deans for Student Affairs, and the Associate Deans for Curriculum - Basic and Clinical Sciences.

While the student is offered the opportunity to appeal all recommended adverse actions, the student can also choose at any point to waive their right to appeal. In addition, all appeals are completed in a timely manner with a target of no longer than 30 days following initial recommendation of an adverse action until the completion of all appeal procedures (sooner when possible). All appeals must be requested in writing to the Office of Student Affairs no later than 10 business days following initial recommendation of an adverse action. Unsuccessful appeals before the Student Progress Appeals Committee may be appealed directly to the Dean. All decisions rendered by the Dean are considered final.

### **Appeal Process to the Dean of the College of Medicine**

If the student appeals to the Dean, the Dean will request that the Associate or Assistant Dean for Student Affairs provide her with all the records related to the student from the admission process for medical school through current medical education status. The Dean reviews all records thoroughly, and may ask to meet with individuals with whom the student has worked during the course of study. For instance, if the student received services from the CAE, the Dean will meet with the Director of CAE and/or the individuals from CAE who worked with the student. If the student has voluntarily signed a release for the Dean to talk to CAPS, she will meet individuals from CAPS who were involved with the student. The Dean will meet with the Associate and/or Assistant Dean for Student Affairs and the Associate Dean for Student Progress to discuss the situation and the processes which took place that led to the student's recommendation for dismissal. After the aforementioned processes, the Dean then meets with the student. Based on all information gathered, a thorough review of the information and various meetings, including the final meeting with the student, the Dean renders a decision. The Dean advises the student in writing of the decision and copies the Associate Dean for Student Progress and the Associate Dean for Student Affairs. The decision of the Dean is final.

### **Specific Circumstances**

#### **First Year**

1. A student who fails a theme or themes must remediate (if eligible) before the beginning of the next semester.
2. If the student successfully remediates, then he/she must meet with the Associate Dean for Student Affairs or designee and is required to develop an academic enhancement plan.
3. If the remediation is unsuccessful, the student is referred to the Student Progress Committee which may recommend repeating the first year and will be on probation until the successful completion of a semester or adverse action such as dismissal.

#### **Second Year**

1. A student who fails a theme or themes in the fall semester must remediate (if eligible) before the beginning of the spring semester. If a student fails a theme or themes in the spring semester he/she must remediate (if eligible) before taking Step 1 of the United States Medical Licensing Examination (USMLE).

2. If the student successfully remediates the theme or themes, then he/she must meet with the Associate Dean for Student Affairs or designee and is required to develop an academic enhancement plan.
3. If the remediation is unsuccessful, the student will be referred to the Student Progress Committee which may recommend repeating the second year and will be on probation until the successful completion of a semester or dismissal.

### **National Board Examination, Step 1**

All rising 3rd year students must sit for Step 1 of the United States Medical Licensing Exam (USMLE) before beginning their clinical rotations. If a student does not pass Step 1 on his/her first attempt, he/she will be allowed to complete the rotation in progress and receive credit if he/she is successful, both clinically and on any examinations but then must take a leave from 3rd year rotations and is placed on Independent Study to prepare further for Step 1.

1. The student can take this examination no more than four (4) times within a 12 month period (per USMLE regulations – go to [www.usmle.org/](http://www.usmle.org/) for the full policy). The student will be registered for an Independent Study Course until a passing score is achieved. The student is required to meet with the Associate Dean for Students or designee, and it is required that an academic enhancement plan is created. If the student fails the examination more than one time, he/she will be placed on probation. He/she will be registered for the Independent Study Course until a passing score is achieved. The student will then be on academic probation until he/she passes Step 1. Once a passing score is received, the student will be eligible to begin his/her next scheduled rotation. Students who do not pass Step 1 on their third attempt are eligible for dismissal.

### **Clinical Years**

A student who receives a grade of IN for a clerkship will be required to meet with the College of Medicine Associate Dean for Student Affairs or designee and will be advised to participate in an academic enhancement plan developed by the student with assistance from Student Affairs Deans. The student must remediate all third-year course work prior to August 1st of the fourth year unless extenuating circumstances exist (e.g., personal illness.)

1. A student who receives a failing grade for a clerkship will be required to repeat the course and will be placed on academic probation. Probationary status is removed once the failed clerkship is successfully repeated. The student will be referred to the Progress Committee.
2. Should a student receive a second IN before clearing the first, the student must immediately withdraw from course of study which he/she is presently taking and satisfactorily remove both INs before progressing. Exams and other failed components must be taken at the first offering in such instances.
3. A student who has not remediated all 3rd year core clerkship course work will not be allowed to register for the USMLE Step 2 examination or participate in away rotations.
4. A student who receives a failing grade for a clinical core course in the 4th year (e.g., the Senior Medicine Rotation or the Externship) will be placed on academic probation and must remove this deficiency by repeating and passing a core course at the first available opportunity. The student will be referred to the Progress Committee.
5. A student who receives failing grades in two clinical core courses will be referred to the Student Progress Committee which may recommend dismissal even if the first failure has been removed by repeating the course.
6. A student who fails a selective or elective will receive a grade of F on the transcript. The student will be referred to the Progress Committee. The student may be given the opportunity to repeat that selective/elective (at the discretion of the course director depending on the extent of the student's deficits) or the student may be required to take a different selective/elective to demonstrate competency and ensure adequate remediation.

### **National Board Examination, Step 2**

Successful completion of Step 1 of the USMLE is required before a student can take Step 2. Successful completion of Step 2 (CK and CS) is required for graduation.

Students must take Step 2 Clinical Knowledge (CK) on or before October 31<sup>st</sup> of their fourth year. Step 2 Clinical Skills (CS) must be taken on or before November 30<sup>th</sup> of the fourth year. These deadlines allow students to take the exam and, in the event that they do not pass, allows enough time to take either exam again before graduation. Failure to adhere to this policy will lead to a referral to the Professionalism Subcommittee and may result in temporary suspension of a student's coursework, a student's inability to graduate on time, and may result in the cancellation of his/her residency contract. Students may take the Step 2 CK examination no more than 4 times in a 12 month period and may take Step 2 CS no more than 3 times in a 12 month period (per USMLE regulations).



**Clinical Practice Exam in Year 3 (CPX3)**

The Clinical Practice Exam consists of standardized patient encounters and corresponding writing stations and is given in July/August of a student's fourth year. This examination is graded on an honors/pass/fail basis and will be included on students' transcripts. In the event that a student fails the CPX3, a mentor will be assigned to him/her in order to remediate the problems that caused failure on the exam and the student must retake the exam. Students must successfully pass or remediate the CPX3 prior to taking the USMLE Step 2 Clinical Skills exam. Successful completion of the CPX3 is required for degree completion. Remediation of the CPX3 will be reported on the MPSE. The Student Progress Committee reviews students' CPX 3 performance. Students who fail the CPX 3 exam or who fail to remediate successfully are referred to the Progress Committee.



# **Exhibit 2**

LAW OFFICES  
**GIBBS & HOLMES**  
171 CHURCH STREET, SUITE 110  
POST OFFICE BOX 938  
CHARLESTON, SOUTH CAROLINA 29402-0938

ALLAN R. HOLMES  
PARTNER  
CERTIFIED SPECIALIST IN LABOR  
AND EMPLOYMENT LAW

TELEPHONE (843) 722-0033  
TELECOPIER (843) 722-0114  
E-MAIL  
aholmes@gibbs-holmes.com

August 30, 2016

Progress Committee  
Medical University of South Carolina  
c/o Justin Silverman

Re: Justin Silverman

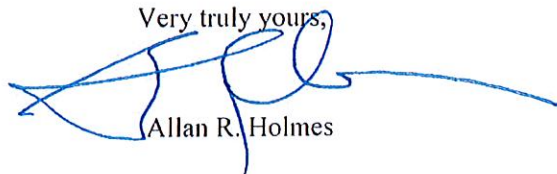
Dear Committee Members:

Justin Silverman has retained me as counsel for the purpose of assisting him in obtaining an accommodation on the USMLE Exam. I am a Certified Specialist in Employment and Labor Law who is quite familiar with the Americans with Disability Act (ADA) and its accommodation requirements. Justin timely filed all materials which were required to seek accommodation from the National Board of Medical Examiners. However, that Board has not yet entered its determination as to whether Justin will be provided reasonable accommodation. I have communicated with the office of General Counsel of the National Board of Medical Examiners, in the context of discussing that entity's duty to accommodate Justin. I am advised that we will be told later today when the decision will be reached on Jason's accommodation request. I have also been in communication with Annette Drachman, Esq., MUSC's General Counsel, about the ADA issues which are relevant to Justin's situation.

Please do not hesitate to contact me with any questions or concerns. I will provide information from the National Board of Medical Examiners when it is received.

With kind regards, I am

Very truly yours,



Allan R. Holmes

ARH/ah

# **Exhibit 3**



## College of Medicine Dean's Office

96 Jonathan Lucas Street  
Suite 601  
MSC 617  
Charleston SC 29425  
Tel 843 792 2081  
Fax 843 792 2967  
[www.musc.edu/com](http://www.musc.edu/com)

September 1, 2016

Justin Silverman  
45 Sycamore Ave, Apt. 1315  
Charleston, SC 29407

Dear Mr. Silverman:

The Student Progress Committee deliberated after meeting with you. The committee approved an extension for you to take USMLE Step 1. You must take Step 1 by December 31, 2016 with or without testing accommodations. Should you fail to successfully complete Step 1 by the established deadline, you will be required to meet with the Progress Committee.

You will remain on professionalism probation. Please contact Ms. Elle Johnson (792-1184) to schedule an appointment with Dr. Freedy to develop an updated Academic Enhancement Plan (AEP). Adherence to the plan is mandatory and failure to do so may result in dismissal from medical school.

Please be reminded that there is a time limit of 6 years for MUSC medical students to complete their undergraduate education. As of June 30, 2016 you have used 4 of the allowed 6 years. Therefore, you cannot have any further delays to your academic or professional record.

Please refer to the College of Medicine section of the MUSC Bulletin for additional information regarding Student Progress Guidelines:

<http://academicdepartments.musc.edu/esl/bulletin/medicine/acadpolicies/probation.html> .

Sincerely,

Sally Self, MD  
Associate Dean for Student Progress

Cc: Donna Kern, MD, Senior Associate Dean for Medical Education  
John R. Freedy, MD, PhD, Associate Dean for Student Affairs  
Myra Haney Singleton, EdD, Assistant Dean for Student Affairs  
Nora Siwarski, Office of Student Financial Aid  
Pat Cassano, Office of Enrollment Management